

Future Claims Representative
Finality
Fed. R. Bankr. P. 8002
Moot

In re Roman Catholic Archbishop of Portland in Oregon, and
Successors, A Corporation Sole, dba the Archdiocese of Portland
in Oregon, Case No. 04-37154-elp11
Appellate No. 05-675-HA & 05-492-HA

4/12/05 & Haggerty Unpub
6/15/05

The District Court entered two orders dismissing appeals concerning the appointment of a future claims representative in the above referenced case.

On December 20, 2004, the bankruptcy court entered an Order Appointing Future Claimants Representative (the "FCR Appointment Order"). On January 3, 2005, the bankruptcy court entered an Order (1) Fixing Bar Date for Filing Proofs of Claim and (2) Approving a Proof of Claim Form, Bar Date Notices, Actual Notice Procedure, and Mailing and Media Notice Program (the "Bar Date Order"). Debtor filed a timely notice of appeal from the Bar Date Order and on January 28, 2005, filed a Precautionary Notice of Appeal from the FCR Appointment Order. Debtor attempted to raise the same issues relating to the appointment of a FCR and the scope of the FCR's authority in both appeals.

On April 12, 2005, the District Court entered an order granting motions to dismiss debtor's Precautionary Notice of Appeal from the FCR Appointment Order in Case No. 05-675-HA. The District Court concluded that it lacked jurisdiction, because the Precautionary Notice of Appeal was untimely under Fed. R. Bankr. P. 8002.

On June 15, 2005, the District Court entered an order granting motions to dismiss debtor's notice of appeal from the Bar Date Order in Case No. 05-492-HA. The District Court concluded debtor's appeal of the Bar Date Order was moot, because it could not grant debtor effective relief.

P05-5(14)

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re)	
)	Case No. 04-37154-elpl1
Roman Catholic Archbishop of Portland in)	
Oregon, and successors, a corporation sole,)	Chapter 11
)	
Debtor.)	ORDER
)	

HAGGERTY, Chief Judge:

On July 6, 2004, the Roman Catholic Archbishop of Portland in Oregon (Debtor) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, commencing this bankruptcy case. Currently before the court are two Motions to Dismiss (Docs. #912 and #922) the "Precautionary Notice of Appeal" filed by Debtor on January 28, 2005. For the reasons provided below, the motions to dismiss are granted.

PROCEDURAL BACKGROUND

On November 15, 2004, Debtor filed an "Amended Motion for an Order (1) Fixing a Bar Date for Filing Proofs of Claim, and (2) Approving a Proof of Claim Form, Bar Date

Notices, Actual Notice Procedure, and Mailing and Media Notice Program." On November 19, 2004, a hearing was held before Bankruptcy Judge Elizabeth Perris regarding Debtor's motion. After the hearing and pursuant to negotiations with the Tort Claimants Committee (TCC), Debtor drafted a proposed order in which David A. Foraker (Foraker) would be appointed Future Claimants Representative (FCR) to represent the interests of certain unknown individuals holding claims against Debtor who will fail to formally assert those claims by the bar date ("Future Claimants").

On December 20, 2004, Judge Perris entered a slightly modified version of that order entitled "Order Appointing Future Claimants Representative" (the "FCR Appointment Order" or "Order"). The Order appointed Foraker as the FCR, provided a definition of Future Claimants, and directed the FCR, among other things, to timely file a proof of claim on behalf of all Future Claimants. The Order also stated that "any interested party who objects to the appointment of David A. Foraker as the Future Claimants Representative shall file any such objection with the Court on or before January 20, 2005." Order Appointing Future Claimants Representative at 3. The Order did not provide for an objection period for any other issue.

On January 3, 2005, Judge Perris entered a second order entitled "Order (1) Fixing a Bar Date for Filing Proofs of Claim and (2) Approving a Proof of Claim Form, Bar Date Notices, Actual Notice Procedure, and Mailing and Media Notice Program" (the "Bar Date Order").¹

¹ On January 13, 2005, Debtor filed a Notice of Appeal of the Bar Date Order (Doc. #813), thereby putting it before the Bankruptcy Appellate Panel (BAP). The FCR then filed a Motion to Dismiss the appeal of the Bar Date Order, and Debtor filed a Motion to Transfer the appeal of the Bar Date Order from BAP to the district court. On March 21, 2005, BAP denied the FCR's Motion to Dismiss the appeal and granted Debtor's Motion to Transfer the

On January 28, 2005, Debtor filed a "Precautionary Notice of Appeal" of the FCR Appointment Order (Doc. #836). On February 22, 2005, the FCR filed its election to have Debtor's appeal of the FCR Appointment Order heard by the district court. On February 23, 2005, the FCR filed its Motion to Dismiss the appeal for lack of jurisdiction (Doc. #912), and on March 1, 2005, the TCC filed its Motion to Dismiss the appeal (Doc. #922). These motions are currently before the court.

DISCUSSION

The FCR and the TCC argue that this court should dismiss Debtor's appeal of the FCR Appointment Order because it was not timely filed. Debtor argues that its appeal was timely because the Order did not become a final order until the objection period expired on January 20, 2005, and, therefore, was not appealable until that date.

This court has jurisdiction to hear appeals from final judgments, orders, and decrees of bankruptcy judges, as well as from interlocutory orders and decrees of bankruptcy judges. 28 U.S.C. 158(a). An appeal "shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules." 28 U.S.C.A. § 158(c)(2).

Rule 8002 provides that a "notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from." Fed. R. Bankr. P. 8002(a). Because the provisions of Rule 8002 are jurisdictional, "the untimely filing of a notice of appeal deprives the appellate court of jurisdiction to review the bankruptcy court's order." *In re Saunders*, 31 F.3d 767, 767 (9th Cir. 1994) (internal

appeal to the district court. Therefore, Debtor's appeal of the Bar Date Order is currently pending in the district court, but is not the subject of this Order.

quotations and citations omitted).

The FCR Appointment Order was entered on December 20, 2004. Because Debtor did not file its notice of appeal until January 28, 2005, approximately thirty-nine days later, Debtor's appeal was untimely. Nonetheless, Debtor argues that because it allowed for an objection period, the FCR Appointment Order was not an appealable order until January 20, 2005. Debtor cites to *National Distribution Agency v. Nationwide Mutual Insurance Company*, 117 F.3d 432 (9th Cir. 1997), and *Zucker v. Maxicare Health Plans, Incorporated*, 14 F.3d 477 (9th Cir. 1994), to support this argument.

In *Nationwide*, the Ninth Circuit considered a district court's order granting a motion to dismiss that included the following sentence: "The Court may amend or amplify this order with a more specific statement of the grounds for its decision." 117 F.3d at 433. The Ninth Circuit held that this sentence rendered the district court's order not final for purposes of 28 U.S.C. § 1291 and that, therefore, the order was not appealable. *Id.* at 434. In *Zucker*, the Ninth Circuit similarly found that an order containing the language, "this Judgment shall not become Final and Effective unless one of the following conditions occurs" was not a final appealable order for purposes of Section 1291 until the conditions requisite for finality occurred. 14 F.3d at 481.

Nationwide and *Zucker* are inapposite to the situation here because they involved appeals from a district court to the court of appeals under 28 U.S.C. § 1291. Section 1291 provides the courts of appeals jurisdiction of appeals from all "final" decisions of the district courts. 28 U.S.C. § 1291. Unlike in those cases, this court obtains jurisdiction over an appeal of a bankruptcy court order under 28 U.S.C. § 158, which provides jurisdiction for both final and interlocutory orders and mandates compliance with the timing requirements of

Rule 8002. Rule 8002 clearly states that a notice of appeal is timely only if it is filed within ten days after the entry of the order. Debtor provides no cases in support of its argument that a bankruptcy order containing an objection period is not subject to the timing requirements of Rule 8002.

Debtor also argues, in the alternative, that this court should consider the finality of the FCR Appointment Order in light of the Bar Date Order. Debtor timely filed its appeal of the Bar Date Order and argues that because the two orders resulted from the same hearing, they form a single "judicial unit" that became final only upon entry of the Bar Date Order. Debtor cites to *In the Matter of Compton Corporation*, 889 F.2d 1104, 1106 (Em. App. 1989) to support this argument.

In *Compton*, a temporary emergency court of appeals considered whether a district court order was "final" for purposes of 28 U.S.C. § 158(d). *Id.* at 1105-06. Section 158(d) grants jurisdiction to the courts of appeals "from all *final* decisions, judgments, orders, and decrees" 28 U.S.C. § 158(d) (emphasis added). The procedural posture in *Compton* was, therefore, different than it is here, where Section 158(a) grants jurisdiction to this court over both final and interlocutory orders. As stated above, Section 158(c)(2) mandates that appeals to this court comply with Rule 8002, which requires appeals to be filed within ten days of the entry of the order appealed from.

Furthermore, the FCR Appointment Order provided for an objection period only for the issue of whether Foraker should be appointed FCR. Debtor did not object to the appointment of Foraker. To the extent Debtor wished to appeal any aspect of the FCR Appointment Order other than the appointment of Foraker, it was clearly required to file such an appeal within ten days of the entry of the Order. In sum, because Debtor failed to

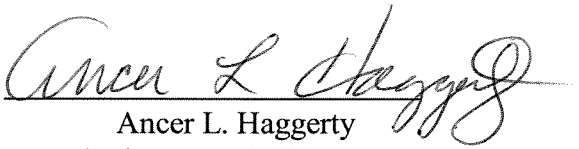
comply with Rule 8002 in filing its notice of appeal of the FCR Appointment Order, this court lacks jurisdiction to consider the appeal. *See In re Saunders*, 31 F.3d at 767.

CONCLUSION

For the aforementioned reasons, the Future Claimants Representative's Motion to Dismiss (Doc. #912) and the Tort Claimants Committee's Motion to Dismiss (Doc. #922) are GRANTED. Debtor's Precautionary Notice of Appeal (Doc. #836) was not timely filed and, therefore, this court lacks jurisdiction to review it.

IT IS SO ORDERED.

Dated this 12 day of April, 2005.


Ancer L. Haggerty
United States District Judge